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EXAMINER				
ELOSHWAY, NIKI MARINA				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/723,575

**Applicant(s)**

WATZKE ET AL.

**Examiner**

NIKI M. ELOSHWAY

**Art Unit**

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**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 March 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 24-60 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 24-60 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SE-US)  
Paper No(s)/Mail Date 3/7/08, 4/10/08
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:  
  
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
2. Claim 55 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 55 recites the limitation "said annular barrier retainer" in line 1. There is insufficient antecedent basis for this limitation in the claim.

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 24, 25, 36, 37 and 54-56 are rejected under 35 U.S.C. 102(b) as being anticipated by Yang (U.S. 6,378,325). Yang teaches a container having a removable lid 3, and a container body 1, 2. The container body has an open top, shown in figure 1, an upper chamber holding salad 6 and a lower chamber at lead line 5, the selective barrier is element 2. The protrusion is the annular protrusion at lead line 12 which supports the barrier. the barrier retainer is partially annular in vertical cross section. The lid is securable by friction and gravity.

*Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 26-29, 31-34, 38-41, 45, 47, 49, 51 and 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yang (U.S. 6,378,325) in view of Florian (U.S. 3,989,158). Yang does not teach the upwardly angled extension of the barrier. Florian, as seen in Fig. 6, teaches the upwardly angled extension at 32 for wedging with the outer container. It would have been obvious to make the barrier of Yang conform the shape of the outer container as taught by Florian to ensure that the extension remains properly seated in the outer container and is not accidentally displaced by the contents on top of the barrier.

Regarding claims 45, 47, 49 and 52 any lid of a container would serve as the bottom of the container body when the container is inverted. Note that the limitations of claims 45, 47, 49, 51 do not require the lid to support the container on a surface.

Regarding claim 51, Florian, as seen in Fig. 6, teaches a positively engaged barrier. It would have been obvious to make the barrier of Yang with a positively engaged barrier, as taught by Florian, in order to ensure that the extension remains properly seated in the outer container and is not accidentally displaced by the contents on top of the barrier.

5. Claims 30, 35, 42, 43 and 58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yang (U.S. 6,378,325) in view of Florian (U.S. 3,989,158), as applied to claims 26, 31 and 38 above, and further in view of Ferguson (U.S. 6,153,237). The primary reference of Yang does not specifically state that the lid forms a liquid tight seal. Ferguson teaches that it is known to provide a compartmented container with a lid which forms a liquid tight seal (see col. 5 lines 21-

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27). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified device of Yang with the lid forming a liquid tight seal, as taught by Ferguson, in order to keep the contents of the device fresh.

Regarding claim 43, any lid of a container would serve as the bottom of the container body when the container is inverted. Note that the limitations of claim 43 do not require the lid to support the container on a surface.

6. Claim 44 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yang (U.S. 6,378,325) in view of Florian (U.S. 3,989,158) and Ferguson (U.S. 6,153,237), as applied to claim 43 above, and further in view of Longstreth (U.S. 6,073,795). The primary reference of Yang teaches a domed lid with a knob. Longstreth teaches that it is known to provide a salad bowl lid with a flat upper surface (see figure 4). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified device of Yang with the lid having a flat upper surface, as taught by Longstreth, in order to allow the device to be stored in a variety of positions and in order to facilitate stable stacking with a like container.

7. Claims 46, 48, 50 and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yang (U.S. 6,378,325) in view of Florian (U.S. 3,989,158), as applied to claims 45, 47, 49 and 52 above, and further in view of Longstreth (U.S. 6,073,795). The primary reference of Yang teaches a domed lid with a knob. Longstreth teaches that it is known to provide a salad bowl lid with a flat upper surface (see figure 4). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified device of Yang with the lid having a flat upper surface, as taught by Longstreth, in order to allow the device to be stored in a variety of positions and in order to facilitate stable stacking with a like container.

8. Claim 57 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yang (U.S. 6,378,325) in view of Ferguson (U.S. 6,153,237). The primary reference of Yang does not specifically state that the lid forms a liquid tight seal. Ferguson teaches that it is known to

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provide a compartmented container with a lid which forms a liquid tight seal (see col. 5 lines 21-27). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the device of Yang with the lid forming a liquid tight seal, as taught by Ferguson, in order to keep the contents of the device fresh.

9. Claim 59 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yang (U.S. 6,378,325) in view of Gade (GB 2,340,823). The primary reference of Yang does not teach that the selective barrier is snap fit into the protrusion. Gade teaches that it is known to provide a compartmented container with a selective barrier which is snap fit into the protrusion (see page 4 lines 8-29). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the device of Yang with the selective barrier being snap fit into the protrusion, as taught by Gade, in order to secure the selective barrier and prevent unintentional movement of the barrier with respect to the body.

10. Claim 60 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yang (U.S. 6,378,325) in view of Florian (U.S. 3,989,158), as applied to claim 38 above, and further in view of Gade (GB 2,340,823). The primary reference of Yang does not teach that the selective barrier is snap fit into the protrusion. Gade teaches that it is known to provide a compartmented container with a selective barrier which is snap fit into the protrusion (see page 4 lines 8-29). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified device of Yang with the selective barrier being snap fit into the protrusion, as taught by Gade, in order to secure the selective barrier and prevent unintentional movement of the barrier with respect to the body.

#### ***Response to Arguments***

11. Applicant's arguments filed March 7, 2008 have been fully considered but they are not persuasive. Applicant argues that Yang does not teach a barrier that is secured to the body.

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Claims 24 and 38 set forth that the selective barrier is “releasably secured to the body”. Element 2 of Yang is the selective barrier. The Yang device meets the limitation added to claims 24 and 38 because the selective barrier 2 is releasably secured to the body 1 by gravity and a frictional fit. The phrase “releasably secured” is insufficient to define the present invention over the Yang device.

12. Note that the newly applied reference of Gade was cited on the IDS filed 7/31/06 and has a publication date of 01.03.2000.

### ***Conclusion***

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Niki M. Eloshway whose telephone number is 571-272-4538. The examiner can normally be reached Monday through Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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